

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

**MICHAEL BRAZELL, JR
ADC #500711**

PLAINTIFF

v.

Case No. 5:14-cv-00328-KGB-PH

GREGORY SOCIA *et al.*

DEFENDANTS

ORDER

The Court has reviewed two Proposed Findings and Recommendations submitted by United States Magistrate Judge Patricia S. Harris (Dkt. Nos. 44, 52). The first Proposed Findings and Recommendation recommends that plaintiff Michael Brazell Jr.'s complaint against a defendant identified as "Ross" be dismissed for failure to provide the correct name for the defendant (Dkt. No. 44). The second Proposed Findings and Recommendation recommends that this Court should grant the motion to dismiss filed by defendants Monica Litzsey and Gregory Socia (Dkt. No. 46). Mr. Brazell filed an objection (Dkt. No. 53). After careful review of the two Proposed Findings and Recommendations, and the objection filed by Mr. Brazell, including a *de novo* review of the record, the Court concludes that both Proposed Findings and Recommendations should be, and hereby are, approved and adopted as this Court's findings in all respects (Dkt. Nos. 44, 52).

Pursuant to the Proposed Findings and Recommendations, Mr. Brazell must pay \$489.40 to the Arkansas Department of Correction as a result of his refusal to complete his deposition. In his objections, Mr. Brazell contends that he could not complete his deposition because his mother had recently passed away, and the defendants were asking questions that had nothing to do with his lawsuit (Dkt. No. 53). He also contends that, if the defendants had completed his deposition "on the date [they] was supposed to" in 2015, they "wouldn't had this problem" (*Id.*). He requests that the Court not grant the motion to dismiss.

Magistrate Judge Harris gave Mr. Brazell the opportunity to object to the motion to dismiss filed by defendants Ms. Litzey and Mr. Socia (Dkt. No. 48). He did not do so. The Order granting the defendants' motion to depose Mr. Brazell did not constrain the defendants to complete that deposition by a particular date or within a certain range of dates (Dkt. No. 17). Prior to Mr. Brazell filing his objection to the Proposed Findings and Recommendations, there is nothing in the record evidence before this Court to indicate that Mr. Brazell opposed or otherwise objected to the date of his deposition. Finally, an action may be dismissed pursuant to Federal Rule of Civil Procedure 41(b) if a plaintiff has failed to comply with any order of the court. *Aziz v. Wright*, 34 F.3d 587, 589 (8th Cir. 1994) (citing *Burgs v. Sissel*, 745 F.2d 526, 528 (8th Cir.1984) (per curiam)). Mr. Brazell willfully disregarded the Court's Order allowing defendants to depose him. In the Order permitting Mr. Brazell to proceed *in forma pauperis*, the Court informed Mr. Brazell that he was required to follow all court rules (Dkt. No. 4). His failure to do so warrants dismissal without prejudice.

It is, therefore, ordered that the motion to dismiss filed by defendants Monica Litzsey and Gregory Socia is granted, and plaintiff Michael Brazell, Jr.'s complaint is dismissed without prejudice (Dkt. Nos. 46, 52). Mr. Brazell's complaint against defendant "Ross" is dismissed without prejudice for failure to provide a correct name (Dkt. No. 44). Mr. Brazell's complaint will be reopened if within 30 days from the date of this Order he pays the Arkansas Department of Correction \$489.40, presents to the Court evidence of the payment, and a files a motion to reopen his case. The Court certifies that an *in forma pauperis* appeal is considered frivolous and not in good faith.

It is so ordered this 13th day of September, 2016.

A handwritten signature in black ink, reading "Kristine G. Baker". The signature is written in a cursive, flowing style. The first name "Kristine" is written with a capital 'K' and a dot over the 'i'. The middle initial "G." is written with a capital 'G' and a dot. The last name "Baker" is written with a capital 'B' and a dot over the 'i'. The signature is positioned above a horizontal line.

KRISTINE G. BAKER
UNITED STATES DISTRICT JUDGE